



image  
PATENT  
Attorney Docket No. 030953

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Art Unit: 1761 :  
In re application of :  
Egbert *et al.* : METHODS OF INCREASING  
Serial No.: 10/050,047 : HARDNESS OF FOOD PRODUCTS  
Filed: January 17, 2002 :  
Examiner: Drew E. Becker

**ELECTION AND AMENDMENT**

Pittsburgh, Pennsylvania 15222  
April 5, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action (the "Action"), dated February 3, 2004 in the above-referenced patent application ("the Application"), Applicants submit the following election and amendments to the claims. Applicants also submit herewith a Power of Attorney and Revocation of Power of Attorney for this application.

Amendments to the claims begin on page 2 of this paper.

Remarks begin on page 7 of this paper.

04/07/2004 ZJUHAR1 00000072 10050047

02 FC:1202

54.00 OP



4/06/04

GP-1761  
\$Attorney's Docket No. 030953

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 1761

In re application of:  
Egbert et al. : HARDNESS OF FOOD PRODUCTS

Serial No.: 10/050,047

Filed: January 17, 2002 : Examiner Drew E. Becker

Commissioner for Patents  
P.O. Box: 1450  
Alexandria, VA 22313-1450

## AMENDMENT TRANSMITTAL

1. Transmitted herewith is an amendment for this application.

## STATUS

2. Applicant is

A statement that this filing is by a small entity is hereby asserted in accordance with the rule change effective September 8, 2000, 65 Fed. Reg. 54603.

other than a small entity.

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CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8a)

I hereby certify that this correspondence is, on the date shown below, being:

## MAILING

deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

## FACSIMILE

transmitted by facsimile to the Patent and Trademark Office.

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Signature

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(type or print name of person certifying)

04/07/2004 ZJUHAR1 00000072 10050047

01 FC:1251

110.00 OP

## EXTENSION OF TERM

**NOTE:** "Extension of Time in Patent Cases (Supplement Amendments) - If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

*If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).*

**NOTE:** See 37 CFR 1.645 for extensions of time in interference proceedings, and 37 CFR 1.550(c) for extensions of time in reexamination proceedings.

**3.** The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

(complete (a) or (b), as applicable)

(a)  Applicant petitions for an extension of time under 38 CFR 1.136  
(fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input checked="" type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 420.00	\$210.00
<input type="checkbox"/> three months	\$ 950.00	\$475.00
<input type="checkbox"/> four months	\$1,480.00	\$740.00

Fee \$ 110.00

If an additional **extension** of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$110.00

**OR**

(b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

## FEE FOR CLAIMS

4. The fee for claims (37 CFR 1.16(b)-(d) has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY			OTHER THAN A SMALL ENTITY	
CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDIT. FEE OR	RATE	ADDIT. FEE	
TOTAL 24•	MINUS 21••	= 3	x9=	\$0	x18=	\$54.00	
INDEP. 3•	MINUS 3•••	= 0	x 43=	\$0	X86=	\$0	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			+130=	\$	+290=	\$0	
			TOTAL ADDIT. FEE	OR	TOTAL ADDIT. FEE	\$0	\$54.00

- If the entry in Col. 1 is less than entry in Col. 2, write "J" in Col. 3.
- If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20."
- If the "Highest No. Previously Paid for" IN THIS SPACE is less than 3, enter "3." The "Highest No. Previously Paid for" (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING** "After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made." 37 CFR § 1.116(a) (emphasis added).

Complete (c) or (d), as applicable)

- (c)  No additional fee for claims is required.

**OR**

- (d)  Total additional fee for claims required \$ 54.00

### FEE PAYMENT

5.  Attached is a check in the sum of \$ 164.00

- Charge Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_

A duplicate of this transmittal is attached.

## FEE DEFICIENCY

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).

6.  If any additional extension and/or fee is required, charge Account No.
7. 11-1110

### AND/OR

- If any additional fee for claims is required, charge Account No.  
11-1110



SIGNATURE OF ATTORNEY

Reg. No.: 36,360

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(type or print name of attorney)

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**EXPRESS MAIL CERTIFICATE**

"Express Mail" label number: EU990155144US

Date of Deposit: April 5, 2004

I hereby certify that the following attached paper or fee

**AMENDMENT TRANSMITTAL****ELECTION AND AMENDMENT****3.73 (b) STATEMENT****CHECK PAYABLE TO THE PTO (for One Month extension fee and extra claims fees)**

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Patents, P.O. Box: 1450, Alexandria, VA 22313-1450.

Beth H. Retort

(Typed or printed name of person mailing paper or fee)

Beth H. Retort

(Signature of person mailing paper or fee)

**NOTE:** Each paper must have its own certificate and the "Express Mail" label number as a part thereof or attached thereto. When, as here, the certification is presented on a separate sheet, that sheet must (1) be signed and (2) fully identify and be securely attached to the paper or fee it accompanies. Identification should include the serial number and filing date of the application as well as the type of paper being filed, e.g. complete application, specification and drawings, responses to rejection or refusal, notice of appeal, etc. If the serial number of the application is not known, the identification should include at least the name of the inventor(s) and the title of the invention.

**NOTE:** The label number need not be placed in each page. It should, however, be placed on the first page of each separate document, such as, a new application, amendment, assignment, and transmittal letter for a fee, along with the certificate of mailing by "Express Mail." Although the label number may be on checks, such a practice is not required. In order not to deface formal drawings it is suggested that the label number be placed on the back of each formal drawing or the drawings be accompanied by a set of informal drawings on which the label number is placed.

**(Express Mail Certificate [8-3])**